IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 32 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GEETA MAYOR

Versus

COMMISSIONER OF GIFT TAX

Appearance:

MR RK PATEL FOR MR KC PATEL for Applicant.

MR BB NAYAK FOR MR MANISH R BHATT for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This reference is at the instance of the assessee. Question Nos. 4 to 11 have been referred for our opinion at the instance of the assessee in respect of assessment year 1976-77. Question Nos. 1 to 3 proposed by the assessee have not been referred. At the instance of the revenue, only one question is referred for our opinion for the same assessment year.

2 Before we proceed to set out the questions, we may note that Mr.B.B.Nayak, learned Counsel for the revenue specifically requests that this Bench (which is assigned all the tax references), to take up this reference under the Gift Tax Act for final disposal in view of the fact that the questions raised herein are already concluded by a previous decision of this Court and also because the reference is old and pending for the last more than 15 years, notwithstanding the fact that one of us (Coram : Mr.Justice D.A.Mehta), had appeared for the assessee at the hearing of the reference application before the Tribunal.

3 Question Nos. 4 to 11 referred at the instance of the assessee are as under :

(4) "Whether, on the facts and in the circumstances of the case the exercise of the power of appointment by the assessee was a transfer of property under sec.2(xxiv)(c) of Gift-tax Act and therefore the assessee was liable to gift-tax under the Gift-tax Act ?"

(5) "Whether, the Tribunal was right in law in holding that for the purpose of sec. 2(xxiv)(c) it is not the scope of the power but its exercise which is relevant and therefore the exercise of power of appointment by itself by the assessee was a transfer under clause (c) of sub-sec.2(xxiv) ?"

(6) "If answer to question No.5 is in the affirmative, is the assessee who is not the owner of the property but merely exercises the powers of appointment during the assessment year thereby naming the person to whom the Trustees of original Trust should transfer the property at a future date, liable to Gift-tax in this assessment year ?"

(7) "If the answer to question 6 is in the

affirmative, then does the 'transfer' of property take place by the assessee in the assessment year in which the power of appointment is exercised or the assessment year in which the power of appointment was to become effective, on account of action of altogether other persons viz. Trustees of original Trust acting on their rights ?"

(8) "Assuming that exercise of power of appointment is a 'transfer of property' within the meaning of Sec.2(xxiv)(c) of the Act, whether the Tribunal was justified in law in making the assessee liable to gift-tax even when other essential prerequisites of 'gift' viz. acceptance of gift by donee, etc. (appointee trust) are not satisfied on 31/3/1976, the date when the power of appointment was exercised ?"

(9) "Whether, the expression 'in such manner' in clause 1(iii) of the Trust Deed cannot cover the authority of the Trustees of original Trusts to transfer the corpus to the assessee as a beneficiary in the manner they did and therefore can it be said that it is a transfer to persons other than the beneficiary of trust. If no, can it not be said that there has been a direct transfer by the Trustees of original Trust to new Appointee Trustees in respect of which no tax is leviable as tax was already paid by the Settlor at the time of the first transfer, which otherwise will tantamount to double taxation ?"

(10) "Whether, the Tribunal exceeded its power and jurisdiction in observing that "for the balance which makes the totality of the corpus the valuation has to be done separately ?"

(11) "If the answer to the above question No.10 is in the affirmative, whether, on the facts and circumstances of the case, the Tribunal's order can be said to be reasonable inasmuch as it has taken into consideration irrelevant matters and has ignored the relevant materials on record while observing regarding balance of corpus and its taxability referred to hereinabove ?"

4 Mr.B.B.Nayak, learned Counsel for the revenue states that the questions raised herein are already answered by this Court in favour of the revenue in the

judgment of this Court in Gift Tax Reference No.2 of 1986. Accordingly, our answer to question Nos. 4 to 9 is in the affirmative i.e. in favour of the revenue and against the assessee. As far as question nos. 10 and 11 are concerned in view of our answer to aforesaid question nos. 4 to 9, it is not necessary to answer question nos. 10 and 11, as they are merely argumentative.

5 Coming to the question referred at the instance of the revenue, the same is as under :

"Whether, the Appellate Tribunal has been right in law in holding that the Gift tax Officer was not justified in levying gift-tax on the value of the entire corpus since it is only the value of the interest in the property which was transferred and was required to be considered for the purpose of gift tax ?"

6 The learned Counsel for the revenue fairly points out that the aforesaid controversy has also been decided in favour of the assessee in the aforesaid decision of this Court in Gift Tax Reference No.2 of 1986. Accordingly, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

7 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt